



FEE TRANSMITTAL for FY 2005

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant Claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$130.00)

Complete if Known

Application Number	10/782,631
Filing Date	February 19, 2004
First Named Inventor	Roy E. GUESS
Examiner Name	Unassigned
Art Unit	3765
Attorney Docket No.	3620-071-01

METHOD OF PAYMENT (check all that apply)

☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account

Deposit Account Number
Deposit Account Name

50-0925

Kilyk & Bowersox, P.L.L.C.

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code	Large Entity Fee (\$)	Small Entity Fee Code	Small Entity Fee (\$)	Fee Description	Fee Paid
1011	790	2011	395	Utility filing fee	
1012	350	2012	175	Design filing fee	
1013	550	2013	275	Plant filing fee	
1014	790	2014	395	Reissue filing fee	
1005	200	2005	100	Provisional filing fee	

SUBTOTAL (1) (\$0.00)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims Independent Claims	Extra Claims	Fee from below	Fee Paid
	-20**=	X	
	-3**=	X	
Multiple Dependent			

Large Entity Fee Code	Large Entity Fee (\$)	Small Entity Fee Code	Small Entity Fee (\$)	Fee Description
1202	50	2202	25	Claims in excess of 20
1201	200	2201	100	Independent claims in excess of 3
1203	360	2203	180	Multiple dependent claim, if not paid
1204	200	2204	100	**Reissue independent claims over original patent
1205	50	2205	25	**Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$0.00)

** or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee Code	Large Entity Fee (\$)	Small Entity Fee Code	Small Entity Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	2053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1020	2253	510	Extension for reply within third month	
1254	1590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1,080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	
1402	500	2402	250	Filing a brief in support of an appeal	
1403	1,000	2403	500	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	500	2452	250	Petition to revive - unavoidable	
1453	1,500	2453	750	Petition to revive - unintentional	
1501	1,400	2501	700	Utility issue fee (or reissue)	
1502	800	2502	400	Design issue fee	
1503	1,100	2503	550	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee for provisional applications	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	
1464	130			Petition requiring the Petition Fee	130.00
Other fee (specify)					
*Reduced by Basic Filing Fee Paid					
SUBTOTAL (3)					(\$130.00)

SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Luke A. Kilyk	Registration No. (Attorney/Agent)	33,251	Telephone	1-540-428-1701
Signature				Date	February 13, 2006

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Date: February 13, 2006 Label No. EV790042147US I hereby certify that, on the date indicated above, I deposited this paper with identified attachments and/or fee with the U.S. Postal Service and that it was addressed for delivery to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 by "Express Mail Post Office to Addressee" service.

Kim Blum
Name (Print)

Signature



2-14-06

cc | IFW\$

Date: February 13, 2006 Label No. EV790042147US I hereby certify that, on the date indicated above, I deposited this paper with identified attachments and/or fee with the U.S. Postal Service and that it was addressed for delivery to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 by "Express Mail Post Office to Addressee" service.

Kim Blum
Name (Print)

Kim Blum
Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: GUESS)	Examiner: Unassigned
Application No.: 10/782,631)	Group Art Unit: 3765
Filed: February 19, 2004)	Confirmation No.: 5106
Docket No. 3620-071-01)	Customer No.: 33432

For: CARPET USING UNUSED YARN

PETITION TO MAKE SPECIAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

February 13, 2006

Sir:

02/15/2006 HTECKLU1 00000046 10782631
01 FC:1464 130.00 OP

The applicant respectfully petitions that the above-identified patent application be granted special status and, therefore, receive accelerated examination. As discussed below, all requirements to grant this Petition are satisfied as detailed in MPEP §708.02, section VIII.

- A) The fee of \$130.00 as set forth in 37 C.F.R. §1.17(h) is enclosed.
- B) All claims are directed to a single invention.
- C) A pre-examination search was made by the EP Searching Authority in a counterpart application.
- D) A copy of each of the references deemed most closely related to the subject matter encompassed by the claims has already been provided to the PTO.
- E) A detailed discussion of the references is submitted, which points out, with the particularity required by 37 C.F.R. §1.111(b) and (c), how the claimed subject

matter is patentable over the references.

With respect to part (A) of the requirement, the applicant encloses herewith a credit card payment form and a Fee Transmittal Form, indicating the appropriate fee of \$130.00 under 37 C.F.R. §1.17(h).

With respect to part (B) of the requirement, all of the claims are directed to a single invention, and all dependent claims, namely claims 2-9 and 11-30 are directly or indirectly dependent on claims 1 and 10.

With respect to part (C) of the requirement, a search by the EP Searching Authority in the counterpart International application was made. The International Search Report, previously provided, also sets forth the details of the search results. A copy of the International Search Report is enclosed. The search results were submitted to the U.S. Patent and Trademark Office in the form of a Supplemental Information Disclosure Statement dated August 19, 2004. Additionally, a copy of the International Preliminary Report on Patentability and Written Opinion was submitted to the U.S. Patent and Trademark Office via the Second Supplemental Information Disclosure Statement dated October 31, 2005.

With respect to part (D) of the requirement, the applicant previously submitted a copy of the references with the Information Disclosure Statements dated June 21, 2004, August 19, 2004, and October 31, 2005; therefore, all of the relevant references are already of record.

With respect to part (E) of the requirement, the applicant encloses herewith (as Attachment A) a detailed discussion of the references, explaining how the claimed invention is patentable over the references.

In view of the above and the attachments, all requirements to grant this Petition have been satisfied.

U.S. Patent Application No. 10/782,631
Petition to Make Special

The applicant seeks expedited examination of the above-identified patent application due to Special Examining Procedure for Certain New Applications.

Should there be any questions with regard to this Petition, the USPTO is requested to contact the undersigned attorney.

If there are any other fees due in connection with the filing of this Petition, please charge such fees to Deposit Account No. 50-0925.

Respectfully submitted,



Luke A. Kilyk
Registration No. 33,231

Attorney Docket No. 3620-071-01
KILYK & BOWERSOX, P.L.L.C.
400 Holiday Court, Suite 102
Warrenton, VA 20186
Tel.: (540) 428-1701
Fax: (540) 428-1720

Enclosures: Attachment A (detailed discussion of the references)
Credit Card Payment Form
Fee Transmittal
International Search Report
International Preliminary Report on Patentability and Written Opinion

REMARKS/ARGUMENTS REGARDING THE REFERENCES

U.S. Patent No. 4,000,707

This patent relates to a tufted pile fabric or carpet which uses different alternating colors to achieve a desired affect, such as a plaid appearance. In general, the patent shows the use of two differently colored yarns, alternately positioned in rows of tufts. A zig-zag configuration of the rows of tufts is generally used to blend the two colors within a pile area. While this patent shows a particular carpet pattern using a plurality of groups A, B, C, and D (and further shown in Figures 1-5 of Spirer), there is no teaching or suggestion relating to the particular patterns set forth in the claims and, in particular, claims 1 and 10 of the present application. While Spirer shows a pattern that uses various colors, Spirer does not show a carpet pattern having eight categories or six categories as set forth in the claims of the present application. Moreover, an important aspect of the present application is the recitation that at least one of the categories A-H contains at least two different types of yarns. This is further explained in the present application, for instance, in paragraph [0033]. The present invention relates to carpet having a yarn pattern wherein in the pattern, different yarns are used for a particular category. As explained in paragraph [0033] of the present application, different lots and/or different colors within the same category for that yarn are used. As a specific example, a carpet can be made having a certain yarn pattern as set forth in claim 1, wherein Yarn A, for instance, contains a yarn having a red color with a Munsell value of 7, and then later in the same yarn pattern for that carpet, Yarn A can be red-purple with the same Munsell value scale or a Munsell value scale anywhere between 6-10. Thus, the present invention provides a carpet having a yarn pattern which provides a recipe to permit one to use a host of different yarns for each category in the same carpet, and yet create a pattern that is visually consistent even with the different types of yarns used. This is

especially beneficial when left over or waste yarn is present. Many times there is not enough yarn left over to create a whole production run. Thus, the present invention permits one to use a combination of various left over or waste yarns as long as the yarn satisfies one of the yarn categories A-H.

With this in mind, Spirer, while showing a carpet pattern, clearly does not teach or suggest a carpet pattern wherein a different yarn is used in a particular category in the same carpet. In other words, Spirer clearly teaches that once a particular yarn is chosen in the pattern, this exact yarn will consistently and always be used for that particular pattern location. Spirer does not teach or suggest a pattern or carpet which actually uses two different types of yarn or a particular yarn category in a particular pattern location. Thus, while Spirer uses different colors and different yarns in a carpet pattern, Spirer does not teach or suggest a carpet that has a yarn pattern which has different yarns for a particular yarn category in a carpet.

U.S. Patent No. 4,077,343

This patent to Hawkins was designated as a "A" reference in the Search Report. This patent describes the use of waste yarn. This patent describes the problems with waste yarn from the standpoint of different color variations, different shades, and the like. This patent shows the use of waste yarn merely for purposes of producing the selvage portion of the carpet, wherein first quality yarn is used to visually appear in the finished carpet. If anything, this patent clearly shows the problems of using waste yarn and the fact that since it is difficult to use based on the variations lot to lot, it is essentially hidden in the carpet.

Unlike Hawkins, the present invention actually provides a solution to the problem of waste yarn by providing a carpet pattern that actually permits waste yarn to be used visually and

not as strictly for selvage portion of the carpet. The present invention clearly provides a better solution to the problem of waste yarn which is not solved by Hawkins.

International Publication No. WO 02/090103

This publication relates to a carpet that uses tufted yarns in certain portions of the carpet and exposes the remaining portions of the primary backing as part of a wear surface. In other words, the back stitches of the tufted primary backing are used as part of the carpet wear surface, along with portions of the primary backing. The publication does state that all, none, or a proportion of the cut fibers may be formed from waste material. However, this publication does not provide any particular carpet pattern for using yarn, such as waste yarn, nor teaches or suggests a pattern wherein the carpet uses at least two different types of yarn in at least one of the categories as described above. The particular problems addressed by the present invention and the solution provided by the present invention clearly are not taught or suggested in this publication.

US Published Patent Application No. 2003/031821 A1

This published application to Oakey et al. relates to carpet tiles having patterns and color schemes that allegedly permit carpet tiles to be laid down in any random orientation. While particular carpet patterns are described in this publication, there is no teaching or suggestion of using the particular carpet pattern set forth in the present claims. Moreover, there is no teaching or suggestion whatsoever relating to the carpet having at least two different types of yarn in a particular category as described above. Unlike Oakey et al., the present invention permits the use of yarn, such as waste yarn, wherein the waste yarn having different shades or other

characteristics can be used in the same carpet pattern for the same category in the carpet pattern. Oakey et al. clearly shows the use of a particular color and maintaining that color in that particular pattern location without changing that type of yarn.

U.S. Published Patent Application No. 2002/136855 A1

This publication to Daniel et al. is the parent application of Oakey et al. (U.S. Published Patent Application No. 2003/031821 A1), and describes the same type of carpet tile and pattern set forth in Oakey et al. above.

PATENT COOPERATION TREATY

RECEIVED
AUG 16 2004

PCT KILYK & BOWERSOX, P.L.L.C.

From the INTERNATIONAL SEARCHING AUTHORITY

To:

KILYK & BOWERSOX, P.L.L.C.
Attn. Kilyk, Luke A.
53 A East Lee Street
Warrenton, Virginia 20186
UNITED STATES OF AMERICA

NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL SEARCH REPORT AND
THE WRITTEN OPINION OF THE INTERNATIONAL
SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

Date of mailing
(day/month/year)

09/08/2004

Applicant's or agent's file reference

3620 071 01 PCT

FOR FURTHER ACTION

See paragraphs 1 and 4 below

International application No.

PCT/US2004/007814

International filing date
(day/month/year)

12/03/2004

Applicant

MANNINGTON MILLS, INC.

1. ☒ The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.

Filing of amendments and statement under Article 19:

The applicant is entitled, if he so wishes, to amend the claims of the International Application (see Rule 46):

When? The time limit for filing such amendments is normally 2 months from the date of transmittal of the International Search Report; however, for more details, see the notes on the accompanying sheet.

Where? Directly to the International Bureau of WIPO, 34 chemin des Colombettes
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 740.14.35

For more detailed instructions, see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.

3. ☐ **With regard to the protest** against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:

- ☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.
☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

4. Reminders

Shortly after the expiration of **18 months** from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within **19 months** from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until **30 months** from the priority date (in some Offices even later); otherwise, the applicant must, **within 20 months** from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of **30 months** (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the International Searching Authority

 European Patent Office, P.B. 5818 Patentlaan 2
NL-2280 HV Rijswijk
Tel. (+31-70) 340-2040, Tx. 31 651 epo nl,
Fax: (+31-70) 340-3016

Authorized officer

Laura Fernández Gómez

NOTES TO FORM PCT/ISA/220

These Notes are intended to give the basic instructions concerning the filing of amendments under article 19. The Notes are based on the requirements of the Patent Cooperation Treaty, the Regulations and the Administrative Instructions under that Treaty. In case of discrepancy between these Notes and those requirements, the latter are applicable. For more detailed information, see also the PCT Applicant's Guide, a publication of WIPO.

In these Notes, "Article", "Rule", and "Section" refer to the provisions of the PCT, the PCT Regulations and the PCT Administrative Instructions respectively.

INSTRUCTIONS CONCERNING AMENDMENTS UNDER ARTICLE 19

The applicant has, after having received the international search report, one opportunity to amend the claims of the international application. It should however be emphasized that, since all parts of the international application (claims, description and drawings) may be amended during the international preliminary examination procedure, there is usually no need to file amendments of the claims under Article 19 except where, e.g. the applicant wants the latter to be published for the purposes of provisional protection or has another reason for amending the claims before international publication. Furthermore, it should be emphasized that provisional protection is available in some States only.

What parts of the international application may be amended?

Under Article 19, only the claims may be amended.

During the international phase, the claims may also be amended (or further amended) under Article 34 before the International Preliminary Examining Authority. The description and drawings may only be amended under Article 34 before the International Examining Authority.

Upon entry into the national phase, all parts of the international application may be amended under Article 28 or, where applicable, Article 41.

When?

Within 2 months from the date of transmittal of the international search report or 16 months from the priority date, whichever time limit expires later. It should be noted, however, that the amendments will be considered as having been received on time if they are received by the International Bureau after the expiration of the applicable time limit but before the completion of the technical preparations for international publication (Rule 46.1).

Where not to file the amendments?

The amendments may only be filed with the International Bureau and not with the receiving Office or the International Searching Authority (Rule 46.2).

Where a demand for international preliminary examination has been/is filed, see below.

How?

Either by cancelling one or more entire claims, by adding one or more new claims or by amending the text of one or more of the claims as filed.

A replacement sheet must be submitted for each sheet of the claims which, on account of an amendment or amendments, differs from the sheet originally filed.

All the claims appearing on a replacement sheet must be numbered in Arabic numerals. Where a claim is cancelled, no renumbering of the other claims is required. In all cases where claims are renumbered, they must be renumbered consecutively (Administrative Instructions, Section 205(b)).

The amendments must be made in the language in which the international application is to be published.

What documents must/may accompany the amendments?

Letter (Section 205(b)):

The amendments must be submitted with a letter.

The letter will not be published with the international application and the amended claims. It should not be confused with the "Statement under Article 19(1)" (see below, under "Statement under Article 19(1)").

The letter must be in English or French, at the choice of the applicant. However, if the language of the international application is English, the letter must be in English; if the language of the international application is French, the letter must be in French.

NOTES TO FORM PCT/ISA/220 (continued)

The letter must indicate the differences between the claims as filed and the claims as amended. It must, in particular, indicate, in connection with each claim appearing in the international application (it being understood that identical indications concerning several claims may be grouped), whether

- (i) the claim is unchanged;
- (ii) the claim is cancelled;
- (iii) the claim is new;
- (iv) the claim replaces one or more claims as filed;
- (v) the claim is the result of the division of a claim as filed.

The following examples illustrate the manner in which amendments must be explained in the accompanying letter:

1. [Where originally there were 48 claims and after amendment of some claims there are 51]:
"Claims 1 to 29, 31, 32, 34, 35, 37 to 48 replaced by amended claims bearing the same numbers; claims 30, 33 and 36 unchanged; new claims 49 to 51 added."
2. [Where originally there were 15 claims and after amendment of all claims there are 11]:
"Claims 1 to 15 replaced by amended claims 1 to 11."
3. [Where originally there were 14 claims and the amendments consist in cancelling some claims and in adding new claims]:
"Claims 1 to 6 and 14 unchanged; claims 7 to 13 cancelled; new claims 15, 16 and 17 added." or
"Claims 7 to 13 cancelled; new claims 15, 16 and 17 added; all other claims unchanged."
4. [Where various kinds of amendments are made]:
"Claims 1-10 unchanged; claims 11 to 13, 18 and 19 cancelled; claims 14, 15 and 16 replaced by amended claim 14; claim 17 subdivided into amended claims 15, 16 and 17; new claims 20 and 21 added."

"Statement under article 19(1)" (Rule 46.4)

The amendments may be accompanied by a statement explaining the amendments and indicating any impact that such amendments might have on the description and the drawings (which cannot be amended under Article 19(1)).

The statement will be published with the international application and the amended claims.

It must be in the language in which the international application is to be published.

It must be brief, not exceeding 500 words if in English or if translated into English.

It should not be confused with and does not replace the letter indicating the differences between the claims as filed and as amended. It must be filed on a separate sheet and must be identified as such by a heading, preferably by using the words "Statement under Article 19(1)."

It may not contain any disparaging comments on the international search report or the relevance of citations contained in that report. Reference to citations, relevant to a given claim, contained in the international search report may be made only in connection with an amendment of that claim.

Consequence if a demand for international preliminary examination has already been filed

If, at the time of filing any amendments under Article 19, a demand for international preliminary examination has already been submitted, the applicant must preferably, at the same time of filing the amendments with the International Bureau, also file a copy of such amendments with the International Preliminary Examining Authority (see Rule 62.2(a), first sentence).

Consequence with regard to translation of the international application for entry into the national phase

The applicant's attention is drawn to the fact that, where upon entry into the national phase, a translation of the claims as amended under Article 19 may have to be furnished to the designated/elected Offices, instead of, or in addition to, the translation of the claims as filed.

For further details on the requirements of each designated/elected Office, see Volume II of the PCT Applicant's Guide.

PATENT COOPERATION TREATY

PCT

INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference 3620 071 01 PCT	FOR FURTHER ACTION <small>see Form PCT/ISA/220 as well as, where applicable, item 5 below.</small>	
International application No. PCT/US2004/007814	International filing date (day/month/year) 12/03/2004	(Earliest) Priority Date (day/month/year) 14/03/2003
Applicant MANNINGTON MILLS, INC.		

This International Search Report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This International Search Report consists of a total of 3 sheets.

☒ It is also accompanied by a copy of each prior art document cited in this report.

1. Basis of the report

a. With regard to the **language**, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ The international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).

b. ☐ With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, see Box No. I.

2. ☐ **Certain claims were found unsearchable** (See Box II).

3. ☐ **Unity of invention is lacking** (see Box III).

4. With regard to the **title**,

☒ the text is approved as submitted by the applicant.

☐ the text has been established by this Authority to read as follows:

5. With regard to the **abstract**,

☒ the text is approved as submitted by the applicant.

☐ the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. With regards to the **drawings**,

a. the figure of the **drawings** to be published with the abstract is Figure No. _____

☐ as suggested by the applicant.

☐ as selected by this Authority, because the applicant failed to suggest a figure.

☐ as selected by this Authority, because this figure better characterizes the invention.

b. ☒ none of the figures is to be published with the abstract.

INTERNATIONAL SEARCH REPORT

International Application No

PCT/US2004/007814

A. CLASSIFICATION OF SUBJECT MATTER

IPC 7 D06N7/00 A47G27/02 B44F3/00

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

IPC 7 D06N A47G B44F D05C

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practical, search terms used)

EPO-Internal, WPI Data

C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
Y	US 2003/031821 A1 (OAKLEY DAVID D ET AL) 13 February 2003 (2003-02-13) page 2, paragraph 10; claims; figures page 2, paragraph 16 page 3, paragraph 31 - page 4, paragraph 40 page 4, paragraph 46 - page 5, paragraph 52	1-31
Y	US 4 000 707 A (SPIRER PETER R) 4 January 1977 (1977-01-04) the whole document	1-31
Y	WO 02/090103 A (BURLINGTON INDUSTRIES INC) 14 November 2002 (2002-11-14) page 11, line 3 - line 5; claim 1 ----- -/--	4-7, 11

☒ Further documents are listed in the continuation of box C.☒ Patent family members are listed in annex.

* Special categories of cited documents:

- *A* document defining the general state of the art which is not considered to be of particular relevance
- *E* earlier document but published on or after the international filing date
- *L* document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)
- *O* document referring to an oral disclosure, use, exhibition or other means
- *P* document published prior to the international filing date but later than the priority date claimed

T later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention

X document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

Y document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art.

G document member of the same patent family

Date of the actual completion of the international search

30 July 2004

Date of mailing of the international search report

09/08/2004

Name and mailing address of the ISA

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Authorized officer

Pamies Olle, S

INTERNATIONAL SEARCH REPORT

International Application No

PCT/US2004/007814

C.(Continuation) DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
A	US 2002/136855 A1 (DANIEL SYDNEY D ET AL) 26 September 2002 (2002-09-26) the whole document -----	1-31
A	US 4 077 343 A (HAWKINS JAMES W) 7 March 1978 (1978-03-07) claim 4 -----	4-7, 11

INTERNATIONAL SEARCH REPORT

Information on patent family members

International Application No

PCT/US2004/007814

Patent document cited in search report	Publication date	Patent family member(s)	Publication date
US 2003031821 A1	13-02-2003	US 2002136855 A1 WO 03103943 A1 BR 0207262 A CA 2438413 A1 EP 1362138 A2 NO 20033571 A WO 02064879 A2 US 2003190450 A1 US 2003143359 A1 US 2003211274 A1 US 2003207067 A1	26-09-2002 18-12-2003 15-06-2004 22-08-2002 19-11-2003 12-08-2003 22-08-2002 09-10-2003 31-07-2003 13-11-2003 06-11-2003
US 4000707 A	04-01-1977	NONE	
WO 02090103 A	14-11-2002	US 2002164448 A1 CA 2446247 A1 WO 02090103 A2	07-11-2002 14-11-2002 14-11-2002
US 2002136855 A1	26-09-2002	BR 0207262 A CA 2438413 A1 EP 1362138 A2 NO 20033571 A WO 02064879 A2 US 2003190450 A1 US 2003031821 A1 US 2003143359 A1 US 2003211274 A1 US 2003207067 A1	15-06-2004 22-08-2002 19-11-2003 12-08-2003 22-08-2002 09-10-2003 13-02-2003 31-07-2003 13-11-2003 06-11-2003
US 4077343 A	07-03-1978	NONE	

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

To:

see form PCT/ISA/220

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2004/007814

International filing date (day/month/year)
12.03.2004

Priority date (day/month/year)
14.03.2003

International Patent Classification (IPC) or both national classification and IPC
D06N7/00, A47G27/02, B44F3/00

Applicant
MANNINGTON MILLS, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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Authorized Officer

Pamies Olle, S

Telephone No. +49 89 2399-6055



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/007814

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/007814

Box No. II Priority

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-31
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-31
Industrial applicability (IA)	Yes: Claims	1-31
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. The following documents from the International Search Report are mentioned for the first time in this written opinion; the numbering will be adhered to in the rest of the procedure:

D1: US 2003/031821 A1 (OAKLEY DAVID D ET AL) 13 February 2003 (2003-02-13)

D2: US-A-4 000 707 (SPIRER PETER R) 4 January 1977 (1977-01-04)

D3: WO 02/090103 A (BURLINGTON INDUSTRIES INC) 14 November 2002 (2002-11-14)

2. **Novelty**

- 2.1 The parameter "Munsell value scale" used in claims 1 and 10 is just one way of expressing the colour of an item among a plurality of other possibilities. It follows that it is difficult to compare the Munsell values of the present application with the prior art.

Therefore the carpet has been interpreted as having two different patterns, one of darker colours (corresponding to the Munsell values of 1-5) and the other one of lighter colours (corresponding to the values of 6-10).

- 2.2 The present application meets the requirements of Article 33(2) PCT, because the subject-matter of claims 1-31 is new since it has not been described in the prior art.

3. **Inventive step**

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1-31 does not involve an inventive step in the sense of Article 33(3) PCT.

3.1 The document D1 is regarded as being the closest prior art to the subject-matter of claim 10, which is considered the most general claim, and discloses (the references in parentheses applying to this document) a carpet having apparently random patterns and colour schemes, which allows the tiles made from it to be installed in any orientation. Even though different lots of yarns of different colours are used, the carpet present a visually consistent appearance and masks colour variations resulting from dye lot differences. The different patterns present in these carpets comprise in a first case (see figures 1-3) four different coloured yarns (light green, yellow, dark green, blue and purple) of similar intensities; in a second case (see figures 4-6) the pattern comprises two groups of yarns, one with three background coloured yarns and the other one with four different yarns with primary colours (which are red, yellow and blue). Any of the yarns could be space dyed and the different yarns could have different colour intensities.

D2 describes a carpet with well defined dark and light patterns comprising different space dye coloured yarns, each of them with different shades. One of the yarns is white (neutral colour).

The problem to be solved by the present invention may therefore be regarded as providing an alternative carpet having two different specific patterns, each of them comprising at least 3 different coloured yarns, permitting the manufacturer to make a carpet being visually acceptable to the user at any time using any coloured yarns, even with different shades, without the need of keeping various lots of finished carpet in storage for a possible later replacement and therefore providing a cost saving.

The solution proposed in claim 10 of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) because the specific pattern with the specific colours of claim 10 appears to be merely one of several straight-forward design options the skilled person would select departing from D1 in combination with D2, in accordance with circumstances, without the exercise of inventive skill, in order to solve the problem posed.

Therefore it could only be regarded as inventive, if the specific pattern of claim 10 would lead to a carpet having unexpected effects or non-obvious advantages over the teaching of D1 in combination with D2. However, such effects or advantages, which would enable an inventive step to be acknowledged, can not be found in the

application.

- 3.2 The same reasoning applies, mutatis mutandis, to the subject-matter of the corresponding independent claim 1, which only differs from claim 10 in that one more yarn is used in each pattern (4 instead of 3). The person skilled in the art would try to use so many yarns as possible in order to solve the problem posed and therefore claim 1 is not inventive.
- 3.3 Dependent claims 2-9 and 11-31 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step for the following reasons:
- the features of claims 4-7 and 11 are obvious from D3.
 - the features of claims 2, 3 and 15 are obvious from D1.
 - the features of claims 8, 9, 12-14 and 16-31 are merely some of several straightforward possibilities from which the skilled person would select, in accordance with circumstances, without the exercise of inventive skill, in order to solve the problem posed.
4. Present claims 1-31 comply with the requirements of Article 33(4) PCT (Industrial applicability).

Re Item VII

Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

1. Although claim 1 has been drafted as a separate independent claim, it includes all the features of claim 10. Hence, claim 1 should be reformulated as a claim dependent on claim 10. The same applies to claim 5, which should be dependent of claim 4, claim 6 should be dependent of claim 5 and claim 7 should be dependent of claim 6.
2. All the independent claims should be drafted in the two-part form as required by Rule 6.3(b) PCT, taking into account the content of prior art documents D1 and D2.

3. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1 and D2 is not mentioned in the description, nor are these documents identified therein.
4. In some countries or regions, such as in Europe, the use of the expressions "a true spirit and scope of the invention" or "incorporated in their entirety by reference herein" which are used in the present description, is regarded as introducing ambiguity.
5. The vague and imprecise statement in the description on page 14, last paragraph implies that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity (Article 6 PCT) when used to interpret them.
6. The units "pound", "inch", "ft" employed in the claims and in the description are not recognized in international practice/generally used, contrary to the requirements of Rule 10.1(d) PCT.

Re Item VIII

Certain observations on the international application

The following observations on the clarity of the claims, description and drawings or on the question whether the claims are fully supported by the description, are made:

1. The term "about" used in claims 25, 26, 30 and 31 and in the description, page 12, paragraph 36 are vague and indefinite and should be deleted for the sake of clarity.

PATENT COOPERATION TREATY

PCT

NOTIFICATION CONCERNING
TRANSMITTAL OF COPY OF INTERNATIONAL
PRELIMINARY REPORT ON PATENTABILITY
(CHAPTER I OF THE PATENT COOPERATION
TREATY)
(PCT Rule 44bis.1(c))

From the INTERNATIONAL BUREAU

RECEIVED
OCT 08 2005

To:

KILYK, Luke, A. KILYK & BOWERSOX, P.L.L.C.
Kilyk & Bowersox, P.L.L.C.
53A East Lee Street
Warrenton, VA 20186
ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 29 September 2005 (29.09.2005)		
Applicant's or agent's file reference 3620071 01 PCT		IMPORTANT NOTICE
International application No. PCT/US2004/007814	International filing date (day/month/year) 12 March 2004 (12.03.2004)	Priority date (day/month/year) 14 March 2003 (14.03.2003)
Applicant MANNINGTON MILLS, INC. et al		

The International Bureau transmits herewith a copy of the international preliminary report on patentability (Chapter I of the Patent Cooperation Treaty)

Docketed

Due Date _____

Dkt No 3620-071-01 PCTBy JMB

The International Bureau of WIPO
34, chemin des Colombettes
1211 Geneva 20, Switzerland

Authorized officer

Athina Nickitas-Etienne

Facsimile No.+41 22 740 14 35

Facsimile No.+41 22 338 89 95

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 3620071 01 PCT	FOR FURTHER ACTION		See item 4 below
International application No. PCT/US2004/007814	International filing date (<i>day/month/year</i>) 12 March 2004 (12.03.2004)	Priority date (<i>day/month/year</i>) 14 March 2003 (14.03.2003)]	
International Patent Classification (IPC) or national classification and IPC 7 D06N 7/00, A47G 27/02, B44F 3/00			
Applicant MANNINGTON MILLS, INC.			

<p>1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 <i>bis</i>.1(a).</p> <p>2. This REPORT consists of a total of 8 sheets, including this cover sheet.</p> <p>In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.</p>																
<p>3. This report contains indications relating to the following items:</p> <table border="0"> <tr> <td><input checked="" type="checkbox"/> Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input checked="" type="checkbox"/> Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/> Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/> Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/> Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/> Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input checked="" type="checkbox"/> Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input checked="" type="checkbox"/> Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table> <p>4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).</p>	<input checked="" type="checkbox"/> Box No. I	Basis of the report	<input checked="" type="checkbox"/> Box No. II	Priority	<input type="checkbox"/> Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/> Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/> Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/> Box No. VI	Certain documents cited	<input checked="" type="checkbox"/> Box No. VII	Certain defects in the international application	<input checked="" type="checkbox"/> Box No. VIII	Certain observations on the international application
<input checked="" type="checkbox"/> Box No. I	Basis of the report															
<input checked="" type="checkbox"/> Box No. II	Priority															
<input type="checkbox"/> Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability															
<input type="checkbox"/> Box No. IV	Lack of unity of invention															
<input checked="" type="checkbox"/> Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement															
<input type="checkbox"/> Box No. VI	Certain documents cited															
<input checked="" type="checkbox"/> Box No. VII	Certain defects in the international application															
<input checked="" type="checkbox"/> Box No. VIII	Certain observations on the international application															

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No. +41 22 740 14 35	Date of issuance of this report 16 September 2005 (16.09.2005)
	Authorized officer Athina Nickitas-Etienne Telephone No. +41 22 338 89 95

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D 05 AUG 2004

WIPO PCT

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2004/007814

International filing date (day/month/year)
12.03.2004

Priority date (day/month/year)
14.03.2003

International Patent Classification (IPC) or both national classification and IPC
D06N7/00, A47G27/02, B44F3/00

Applicant
MANNINGTON MILLS, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
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Fax: +49 89 2399 - 4465

Authorized Officer

Pamies Olle, S

Telephone No. +49 89 2399-6055



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/007814

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/007814

Box No. II Priority

1. ☒ The following document has not been furnished:

- ☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-31
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-31
Industrial applicability (IA)	Yes: Claims	1-31
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. The following documents from the International Search Report are mentioned for the first time in this written opinion; the numbering will be adhered to in the rest of the procedure:

D1: US 2003/031821 A1 (OAKEY DAVID D ET AL) 13 February 2003 (2003-02-13)

D2: US-A-4 000 707 (SPIRER PETER R) 4 January 1977 (1977-01-04)

D3: WO 02/090103 A (BURLINGTON INDUSTRIES INC) 14 November 2002 (2002-11-14)

2. **Novelty**

- 2.1 The parameter "Munsell value scale" used in claims 1 and 10 is just one way of expressing the colour of an item among a plurality of other possibilities. It follows that it is difficult to compare the Munsell values of the present application with the prior art.

Therefore the carpet has been interpreted as having two different patterns, one of darker colours (corresponding to the Munsell values of 1-5) and the other one of lighter colours (corresponding to the values of 6-10).

- 2.2 The present application meets the requirements of Article 33(2) PCT, because the subject-matter of claims 1-31 is new since it has not been described in the prior art.

3. **Inventive step**

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1-31 does not involve an inventive step in the sense of Article 33(3) PCT.

- 3.1 The document D1 is regarded as being the closest prior art to the subject-matter of claim 10, which is considered the most general claim, and discloses (the references in parentheses applying to this document) a carpet having apparently random patterns and colour schemes, which allows the tiles made from it to be installed in any orientation. Even though different lots of yarns of different colours are used, the carpet present a visually consistent appearance and masks colour variations resulting from dye lot differences. The different patterns present in these carpets comprise in a first case (see figures 1-3) four different coloured yarns (light green, yellow, dark green, blue and purple) of similar intensities; in a second case (see figures 4-6) the pattern comprises two groups of yarns, one with three background coloured yarns and the other one with four different yarns with primary colours (which are red, yellow and blue). Any of the yarns could be space dyed and the different yarns could have different colour intensities.

D2 describes a carpet with well defined dark and light patterns comprising different space dye coloured yarns, each of them with different shades. One of the yarns is white (neutral colour).

The problem to be solved by the present invention may therefore be regarded as providing an alternative carpet having two different specific patterns, each of them comprising at least 3 different coloured yarns, permitting the manufacturer to make a carpet being visually acceptable to the user at any time using any coloured yarns, even with different shades, without the need of keeping various lots of finished carpet in storage for a possible later replacement and therefore providing a cost saving.

The solution proposed in claim 10 of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) because the specific pattern with the specific colours of claim 10 appears to be merely one of several straight-forward design options the skilled person would select departing from D1 in combination with D2, in accordance with circumstances, without the exercise of inventive skill, in order to solve the problem posed.

Therefore it could only be regarded as inventive, if the specific pattern of claim 10 would lead to a carpet having unexpected effects or non-obvious advantages over the teaching of D1 in combination with D2. However, such effects or advantages, which would enable an inventive step to be acknowledged, can not be found in the

application.

- 3.2 The same reasoning applies, mutatis mutandis, to the subject-matter of the corresponding independent claim 1, which only differs from claim 10 in that one more yarn is used in each pattern (4 instead of 3). The person skilled in the art would try to use so many yarns as possible in order to solve the problem posed and therefore claim 1 is not inventive.
- 3.3 Dependent claims 2-9 and 11-31 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step for the following reasons:
- the features of claims 4-7 and 11 are obvious from D3.
 - the features of claims 2, 3 and 15 are obvious from D1.
 - the features of claims 8, 9, 12-14 and 16-31 are merely some of several straightforward possibilities from which the skilled person would select, in accordance with circumstances, without the exercise of inventive skill, in order to solve the problem posed.
4. Present claims 1-31 comply with the requirements of Article 33(4) PCT (Industrial applicability).

Re Item VII

Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

1. Although claim 1 has been drafted as a separate independent claim, it includes all the features of claim 10. Hence, claim 1 should be reformulated as a claim dependent on claim 10. The same applies to claim 5, which should be dependent of claim 4, claim 6 should be dependent of claim 5 and claim 7 should be dependent of claim 6.
2. All the independent claims should be drafted in the two-part form as required by Rule 6.3(b) PCT, taking into account the content of prior art documents D1 and D2.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/US2004/007814

3. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1 and D2 is not mentioned in the description, nor are these documents identified therein.
4. In some countries or regions, such as in Europe, the use of the expressions "a true spirit and scope of the invention" or "incorporated in their entirety by reference herein" which are used in the present description, is regarded as introducing ambiguity.
5. The vague and imprecise statement in the description on page 14, last paragraph implies that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity (Article 6 PCT) when used to interpret them.
6. The units "pound", "inch", "ft" employed in the claims and in the description are not recognized in international practice/generally used, contrary to the requirements of Rule 10.1(d) PCT.

Re Item VIII

Certain observations on the international application

The following observations on the clarity of the claims, description and drawings or on the question whether the claims are fully supported by the description, are made:

1. The term "about" used in claims 25, 26, 30 and 31 and in the description, page 12, paragraph 36 are vague and indefinite and should be deleted for the sake of clarity.